

Opinion No. 76-34

September 23, 1976

BY: OPINION OF TONEY ANAYA, Attorney General Robert M Strumor, Assistant Attorney General

TO: Carlos L. Jaramillo, Director, Department of Alcoholic Beverage Control, Lew Wallace Building, Santa Fe, New Mexico 87503

QUESTIONS

Question

Whether an individual or corporation engaged in the operation of an intrastate commuter service or a guided tour service by bus or van is eligible for a license for the sale, service or consumption of alcoholic liquors to travelers on the vehicles?

Conclusion

See analysis.

OPINION

{*121} Analysis

Sections 46-5-1 and 46-5-2, NMSA, 1953 Comp. (1975 P.S.) provides as follows:

46-5-1. Liquor policy of state -- Investigation of applicants -- It is hereby declared to be the policy of this act that **the sale of all alcoholic liquors in the state of New Mexico shall be licensed**, regulated and controlled so as to protect the public health, safety and morals of every community in this state; and it is hereby made the responsibility of the chief of the division to investigate into the legal qualifications of all applicants for licenses under this act, and to investigate into the conditions existing in the community wherein are located the premises for which any license is sought, before such license is issued, to the end that licenses shall not be issued to unqualified or disqualified persons or for prohibited places or locations. (Emphasis added.)

46-5-2. Dispenser's license. -- In any local option district any person who is the proprietor or owner of any hotel or restaurant, as herein defined, or any person qualified under the terms of any ordinance of any municipality or resolution of any board of county commissioners or any other person who is not disqualified by provisions of this act, may apply for, and if found qualified by the licensing authorities whose duty it is to make a finding concerning such qualifications, shall be issued a dispenser's license for the sale of alcoholic liquors. A dispenser's license may be reclassified or converted to a retailer's license upon proper application and payment of the license fees to the chief of

division. The reclassified or converted license {**122*} shall not be considered a new or additional license if it is to be used at the same location or if it does not add to the sum total of the licenses of a given area in computation for the purpose of determining the maximum number of licenses that may be issued.

Section 46-5-20 provides as follows:

46-5-20. License fees for transportation companies. -- **Every transportation company or other person selling alcoholic liquors to travelers on trains within the state of New Mexico shall secure a public service license from the division** on July first of each year and shall pay therefor a fee of one hundred and fifty dollars (\$ 150), and a photostatic copy of said license shall be posted in each car from which such alcoholic liquors are sold. (Emphasis added.)

Under Section 46-5-20, *supra*, only trains which are actually carrying passengers (travelers on trains) may serve, sell or give alcoholic beverages to its customers. Webster's Third New International Dictionary (Unabridged, 1961) defines train and bus as follows:

Train -- a connected line of railroad cars with or without a locomotive.

Bus -- a large motor driven vehicle designed to carry passengers usu. according to a schedule along a fixed route but sometimes under charter for a special trip.

any various conveyances resembling a bus (as in carrying passengers or traveling fixed route according to a schedule).

The commuter vans seeking a license are smaller than buses, however, they resemble a bus and are traveling a fixed route according to schedule. Therefore, for the purposes of this analysis, the commuter vans will be considered the same as buses.

It is clear from the above definitions that buses or vans are quite different from trains and cannot possibly qualify as trains for the purposes of Section 46-5-20, *supra*. The statute is quite specific and only pertains to the issuance of liquor licenses to transportation companies operating trains. Therefore, any individual or corporation which operates intrastate tour services or commuter services using vehicles other than "trains" will not qualify for licensure under Section 46-5-20, *supra*.

Section 46-5-1, NMSA, 1953 Comp. as amended requires that the sale of alcoholic beverages in New Mexico be licensed. Because there are currently no provisions in the Liquor Control Act that would permit the licensing of commuter services other than trains to dispense alcoholic liquors, no licenses may be issued until an amendment to the Liquor Control Act permits it.

There is a legitimate state interest in distinguishing between trains and other types of vehicles. One of the purposes of the Act is to control the sale of alcoholic beverages

within the State of New Mexico. Trains may travel over severely limited routes, the existing railroad tracks. Should the Department of Alcoholic Beverage Control wish to observe or inspect the dispensing of liquor or trains, the predictability of the location of a particular train insures that the inspection or observation may easily be made. On the other hand, buses and vans are not restricted by railroad tracks. It is conceivable that once licensed, a company operating { *123 } buses could dispense alcoholic beverages anywhere in the state at any time. Enforcement of the Liquor Control Act as to those vehicles would be extremely difficult if not impossible.

In sum, intrastate bus tours and intrastate commuter services by bus or van may not qualify for a license to dispense alcoholic liquors under present statutes.